

CATEGORY: Consent

DEPT.: Finance and Administrative Services

TITLE: Remarketing the City's Outstanding Variable Rate Demand Multi-Family Housing Revenue Bonds (Villa-Mariposa Project) 1985 Series A

RECOMMENDATION

Adopt A RESOLUTION OF THE CITY OF MOUNTAIN VIEW AUTHORIZING REMARKETING OF THE CITY OF MOUNTAIN VIEW VARIABLE RATE DEMAND MULTI-FAMILY HOUSING REVENUE BONDS (VILLA-MARIPOSA PROJECT) 1985 SERIES A, AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS AND APPROVING OTHER RELATED ACTIONS, to be read in title only, further reading waived.

FISCAL IMPACT

Staff recommends the Council approve the proposed remarketing of the City's outstanding Multi-Family Housing Revenue Bonds (Villa-Mariposa Project) 1985 Series A (the "Bonds") with a new Fannie Mae credit enhancement and authorize staff to execute related documents.

Staff anticipates no fiscal impact from this proposal. All costs, including compensation for the City's bond counsel, will be paid by San Francisco Bay Partners II, Ltd. (the "Borrower"), the party to whom the City loaned the Bond proceeds. The Bonds remain tax-exempt obligations secured by the mortgage loan to the Borrower and will now be further secured by a Fannie Mae credit facility. The cost of the Fannie Mae credit facility is borne by the Borrower. Neither the general taxing power of the City nor any other asset or revenues of the City are pledged to the Bonds. The City will continue to receive an annual fee of \$25,000 to compensate the City for the staff work involved in monitoring the Bonds and related matters.

BACKGROUND AND ANALYSIS

On November 21, 1985, the City issued \$20,000,000 Multi-Family Housing Revenue Bonds (Villa-Mariposa Project) 1985 Series A (the "Bonds") to finance acquisition and construction by the Borrower of a 248-unit, multi-family apartment development known as Villa-Mariposa Apartments (the "Development") located at 1500 Villa Street in the City. Currently, the outstanding principal amount of the Bonds is \$18,300,000. The Bonds mature on February 15, 2017 (the "Maturity Date").

The Bonds were issued under an Indenture of Trust, dated as of March 1, 1985 (the "Indenture"), between the City and Bank of America National Trust and Savings Association, as trustee (the "Original Trustee"). The proceeds of the Bonds were loaned to the Borrower under a Loan Agreement between the City, the Original Trustee and the Borrower (the "Loan Agreement").

As a condition to issuing the Bonds, the City required the Borrower, pursuant to a Regulatory Agreement, to restrict 20 percent of the units in the Development to occupancy by low- and moderate-income tenants (tenants whose gross income does not exceed 80 percent of the median gross income for the City) for a specific time period (the "Qualified Project Period"), which has now expired. Based on certifications provided as of December 1, 2003, the project continues to provide 20 percent of the units to low- and moderate-income tenants. In addition, the City required the Borrower to pay the City an annual administration fee of \$25,000.

In 1993, the City Council approved amendments to the Bond-related documents, including an Amended and Restated Indenture of Trust and an Amended and Restated Loan Agreement, which allowed the Bonds to be remarketed as variable rate demand bonds with credit enhancement and liquidity support provided by Financial Guaranty Insurance Corporation ("FGIC") and FGIC Securities Purchase, Inc., respectively. The Bonds, under the FGIC credit enhancement structure, were given the rating agencies' highest short-term ratings: Aaa/VMIG-1 by Moody's and AAA/A-1+ by Standard & Poor's ("S&P"). The term of the FGIC credit enhancement expires at the end of March 2004, and the term of the liquidity facility expires at the end of February 2004.

The Indenture, as amended in 1993, permits the substitution of a new credit facility upon expiration of the FGIC credit enhancement. The Borrower has obtained a commitment from Fannie Mae for a substitute credit facility (the "Fannie Mae Credit Facility") that will secure the Bonds through the Maturity Date.

The Borrower has requested the City's assistance in replacing the FGIC credit enhancement and liquidity support with the Fannie Mae Credit Facility. The ratings on the Bonds will continue to receive the highest short-term rating, although they will only be rated by S&P ("AAA/A-1+"). The City will continue to receive its annual administration fee. The Borrower will pay the City's costs, including the costs of the City's bond counsel.

The Borrower has requested similar credit enhancement modifications to bond-financed developments located in the Cities of San Jose and Hayward, and in the County of Santa Clara (through the Santa Clara Housing Authority).

Because the Maturity Date of the Bonds is not being extended, and because the outstanding Bonds are simply being remarketed with a new underlying credit facility, it is not necessary to hold a public hearing on this matter.

FINANCING STRUCTURE

The Bonds consist of a single series of bonds in the amount of \$20,000,000 of which \$18,300,000 is outstanding. In 1993, the bonds were restructured to variable-rate bonds whereby little or no amortization has occurred since 1993.

Fannie Mae, by providing the Fannie Mae Credit Facility, will serve, in effect, as a new permanent lender for the Development. If the Borrower defaults on its loan repayments to the City (which the City assigned to the Trustee for the benefit of the Bondholders), the Bondholders will be paid by Fannie Mae, and Fannie Mae will pursue remedies (including foreclosure under a deed of trust) against the Borrower.

The Bonds will continue to be remarketed as variable rate demand bonds. RBC Dain Rauscher, Inc. (the "Remarketing Agent") will reset the interest rate on the Bonds on a weekly basis pursuant to a Remarketing Agreement with the Borrower. The City is not a party to the Remarketing Agreement, and the Council is not being asked to approve the Remarketing Agreement.

Bond Remarketing and Credit Substitution Process

The Fannie Mae Credit Facility will attach to the Bonds without the need for the City to issue new bonds. To achieve this result, the Indenture will be amended to require U.S. Bank National Association, as successor trustee under the Indenture (the "Trustee"), to send notices to the Bondholders that a mandatory purchase of their Bonds will occur as a result of a credit enhancement substitution. The Bondholders will be required to tender (i.e., surrender) their Bonds to the Remarketing Agent in exchange for payment of principal and accrued interest, and, on the same date, the Remarketing Agent will remarket the Bonds (with the backing of the Fannie Mae Credit Facility) to new Bondholders. Remarketing the Bonds with the Fannie Mae Credit Facility is more cost effective to the Borrower than issuing new Bonds or refunding Bonds.

The Bonds will be remarketed by the Remarketing Agent using a Remarketing Circular that describes the Development, the Borrower and the Bond-related documents. The City is not a party to the Remarketing Circular, and the Council is not being asked to approve it.

Bond Documents

Several Bond-related documents require City Council approval before the Fannie Mae Credit Facility will be delivered and the Bonds can be remarketed. Each of the documents will be executed on behalf of the City by the City Manager, the Finance and Administrative Services Director or other authorized officers. These documents are described below. Copies of these documents, in substantially final form, will be available in the City Clerk's Office. The final documents will be in substantially the same form as the copies available in the City Clerk's Office.

First Supplemental Indenture. The First Supplemental Indenture (the "Supplemental Indenture") is between the City and the Trustee. The First Supplemental Indenture requires existing Bondholders to surrender (or tender) their Bonds for purchase on the date that the Fannie Mae Credit Facility replaces the existing FGIC credit enhancement. As a result of the mandatory tender, the Remarketing Agent will momentarily own all the Bonds and will approve, as the sole Bondowner, Fannie Mae's unique bond documentation requirements (including the documents described below).

Second Amended and Restated Indenture of Trust. The Second Amended and Restated Indenture of Trust (the "Restated Indenture") is between the City and the Trustee, and amends and restates the Indenture. The primary purpose of restating the current Indenture is to replace FGIC's unique bond documentation requirements with Fannie Mae's unique bond documentation requirements. The Restated Indenture would continue to obligate the Borrower to pay Trustee fees and expenses, and would preserve the limited nature of the City's obligation for the Bonds.

Financing Agreement. The Financing Agreement is among the City, the Trustee and the Borrower, and replaces the Amended and Restated Loan Agreement. The Financing Agreement governs the loan of the Bond proceeds to the Borrower and the repayment of the loan by the Borrower. The Financing Agreement documents the Borrower's obligation to indemnify the City and its obligation to pay the City an annual administration fee.

Third Amendment to Regulatory Agreement. The Third Amendment to Regulatory Agreement amends the existing Regulatory Agreement, primarily to reflect Fannie Mae's unique bond documentation requirements.

Assignment and Intercreditor Agreement. Under the Assignment and Intercreditor Agreement, the City will assign most of its enforcement rights under the Bond documents to Fannie Mae. The Intercreditor Agreement prohibits the City and the Trustee from foreclosing on the Development without the consent of Fannie Mae, so long as Fannie Mae is making payments to the Trustee for the benefit of Bondholders.

AGENDA: January 13, 2004

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SUMMARY

Staff requests: (1) approval of the proposed remarketing of the Bonds following substitution of the Fannie Mae Credit Facility; and (2) authority to execute related documents.

Bond counsel has reviewed the proposed documents and the related transaction structure.

Bond counsel, Chris Lynch of Jones Hall, will be available to answer any questions.

PUBLIC NOTICING—Agenda posting.

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PJK/8/CAM
546-01-13-04M-E^

Attachment: 1. Resolution Authorizing Remarketing of Bonds

CITY OF MOUNTAIN VIEW
RESOLUTION NO.
SERIES 2004

A RESOLUTION OF THE CITY OF MOUNTAIN VIEW AUTHORIZING
REMARKETING OF THE CITY OF MOUNTAIN VIEW VARIABLE RATE DEMAND
MULTI-FAMILY HOUSING REVENUE BONDS (VILLA-MARIPOSA PROJECT)
1985 SERIES A, AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED
DOCUMENTS AND APPROVING OTHER RELATED ACTIONS

WHEREAS, Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code (the "Act") authorizes public agencies, including the City of Mountain View (the "City"), to incur indebtedness for the purpose of providing multi-family residential housing for persons of low income; and

WHEREAS, the City previously issued its \$20,000,000 initial principal amount of Variable Rate Demand Multi-Family Housing Revenue Bonds (Villa-Mariposa Project), 1985 Series A (the "Bonds"), of which \$18,300,000 is outstanding, pursuant to the Act to provide financing for the acquisition, construction and development of a 248-unit multi-family rental housing development, known as Villa-Mariposa and located in the City of Mountain View, California (the "Project"); and

WHEREAS, the City and Bank of America National Trust and Savings Association (the "Original Trustee"), as predecessor to U.S. Bank National Association (the "Trustee"), entered into an Indenture of Trust, dated as of March 1, 1985, providing for the issuance of and securing the Bonds, as such Indenture of Trust was amended by an Amended and Restated Indenture of Trust, dated as of June 25, 1993, and further supplemented and amended by a First Supplement to the Indenture, dated March 17, 1994, each between the City and the Original Trustee, as predecessor in interest to the Trustee (as amended, the "Prior Indenture"); and

WHEREAS, the City, the Trustee and San Francisco Bay Partners II, Ltd. (the "Borrower"), entered into a Loan Agreement, dated as of March 1, 1985, providing for the loan of the proceeds of the Bonds to the Borrower, as such Loan Agreement was amended by an Amended and Restated Loan Agreement, dated as of June 25, 1993, among the City, the Trustee and the Borrower (as amended, the "Loan Agreement"); and

WHEREAS, the City, the Trustee and the Borrower entered into a Regulatory Agreement, dated as of March 1, 1985, as such Agreement was amended by two documents entitled "First Amendment to Regulatory Agreement": (1) a First

Amendment to Regulatory Agreement dated as of April 1, 1985, by and among the City, Bank of America National Trust and Savings Association, as predecessor to the Trustee, Citicorp Real Estate, Inc., and the Borrower; and (2) a First Amendment to Regulatory Agreement, dated as of March 17, 1994, by and among the City, Bank of America National Trust and Savings Association, as predecessor to the Trustee, and the Borrower (as amended, the "Regulatory Agreement"), providing for certain requirements applicable to the Project; and

WHEREAS, the Borrower desires to substitute a credit enhancement facility issued by Fannie Mae ("Fannie Mae") for the credit enhancement currently securing the Bonds; and

WHEREAS, in anticipation of such credit facility substitution, the Borrower has requested that the City and the Trustee amend the Prior Indenture for the purpose of providing for notice to Bond owners and the mandatory purchase of the Bonds in order to accomplish the credit facility substitution, in the form of a Second Supplement to the Indenture (the "Second Supplement to the Indenture"); and

WHEREAS, in connection with the credit facility substitution, the Borrower has requested that the City and the Trustee further amend and restate the Prior Indenture, together with the Borrower amend the Regulatory Agreement, and, together with the Borrower, execute a Financing Agreement, all in the respective forms of, and for the reasons and purposes set forth in, the respective forms of, the Second Amended and Restated Indenture of Trust (the "Indenture"), the Third Amendment to Regulatory Agreement (the "Regulatory Agreement Amendment") and the Financing Agreement (the "Financing Agreement") presented at this meeting; and

WHEREAS, the Indenture and the Regulatory Agreement may be amended and/or restated pursuant to the provisions of the Indenture and the Regulatory Agreement, respectively, upon compliance with certain provisions thereof, which provisions shall be complied with prior to execution and delivery of such amendments; and

WHEREAS, in connection with such credit facility substitution, Fannie Mae has requested that the Authority enter into an Assignment and Intercreditor Agreement, in the respective form of the Assignment and Intercreditor Agreement (the "Intercreditor Agreement") presented at this meeting; and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to the remarketing of the Bonds and the amendment, execution and delivery of the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain View, as follows:

Section 1. The City hereby finds and declares that the above recitals are true and correct.

Section 2. Pursuant to the Act and the Indenture, the City hereby authorizes remarketing of the Bonds in an aggregate principal amount not to exceed \$18,300,000.

Section 3. The Second Supplement to the Indenture and the Indenture, in the forms presented to this meeting, are hereby approved. The City Manager or the Finance and Administrative Services Director of the City (the "Designated Officers"), or a written designee of the Designated Officers, are, and each of them acting alone is, hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Second Supplement to the Indenture and the Indenture, and the City Clerk (or a written designee of the City Clerk) is hereby authorized and directed, for and in the name and on behalf of the City, to attest the Designated Officer's (or a written designee of a Designated Officer) signature on the Second Supplement to the Indenture and the Indenture, in substantially the forms presented to this meeting, with such additions thereto or changes therein as are recommended or approved by such Designated Officers upon consultation with bond counsel to the City, including such additions or changes as are necessary or advisable in accordance with Section 6 hereof (provided that no additions or changes shall authorize an aggregate principal amount of Bonds in excess of \$18,300,000), the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Second Supplement to the Indenture and the Indenture. The date, maturity dates, interest rate or rates, interest payment dates, denominations, form registration privileges, manner of execution, place of payment, terms of redemption and other terms of the Bonds shall be as provided in the Indenture as finally executed.

Section 4. The Financing Agreement among the Trustee, the City and the Borrower, in the form presented to this meeting, is hereby approved. The Designated Officers of the City, or a written designee of the Designated Officers, are, and each of them acting alone is, hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Financing Agreement in said form, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the City including such additions or changes as are necessary or advisable in accordance with Section 6 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Financing Agreement.

Section 5. The Regulatory Agreement Amendment among the City, the Trustee and the Borrower, in the form presented to this meeting, is hereby approved. The Designated Officers of the City (or a written designee of a Designated Officer) are, and each of them acting alone is, hereby authorized and directed for and in the name of and on behalf of the City, to execute and deliver the Regulatory Agreement Amendment in said form, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the City, including such additions or changes as are necessary or advisable in accordance with Section 6 hereof, the approval of such changes to be conclusively evidenced by the execution and delivery by the City of such Regulatory Agreement Amendment.

Section 6. All actions heretofore taken by the officers and agents of the City with respect to the remarketing of the Bonds are hereby approved, confirmed and ratified, and the proper officers of the City, including the Designated Officers (or a written designee of a Designated Officer), are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents which they, or any of them, may deem necessary or advisable in order to consummate the lawful remarketing and reissuance of the Bonds in accordance with this Resolution and resolutions heretofore adopted by the City, including but not limited to the Intercreditor Agreement and those certificates, agreements and other documents described in the Second Supplement to the Indenture, the Indenture, the Financing Agreement, the Regulatory Agreement Amendment, and the other documents herein approved, and any certificates, agreements or documents as may be necessary to further the purpose hereof, evidence credit support or additional security for the Bonds, but which shall not create any obligation or liability of the City other than with respect to the revenues and assets derived from the proceeds of the Bonds or loan payments from the Borrower.

Section 7. This resolution shall take effect immediately upon its adoption.

PJK/9/RESO
546-01-13-03R-E^